Drawing Amendments:

As requested by the Office Action, the legend "Prior Art" has been added to the attached Replacement Sheet for Figure 1. An Annotated Sheet indicating the change is also attached.

REMARKS

Applicant appreciates the Examiner's attention to this Application. The Office Action includes the following groups of rejections:

(A) rejection of claims 20 and 24 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;

(B) rejection of claims 13, 17, 20, and 24 under 35 U.S.C. § 112, second paragraph, as being indefinite with regard to the claim language "attempting to detect a watermark;"

(C) rejection of claims 1, 6, 10, 13, 17, 20, and 24 under 35 U.S.C. § 112, second paragraph, as being indefinite, with regard to the claims language "more sensitive;"

(D) rejection of claims 5, 9, 12, 16, 19, 23, and 26 under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential elements;

(E) rejection of claims 1-12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent app. pub. no. 2003/0103645 to Kenneth L. Levy et al. ("Levy").

(F) rejection of claims 13-26 under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art ("APA") in view of Levy.

Rejection Group A -- Section 101:

This Response amends claims 20 and 24 to explicitly refer to an "article of manufacture" and a "computer readable storage medium."

Rejection Group B -- Section 112, second paragraph:

This Response amends claims 13, 17, 20, and 24 to clarify that the claims definitely call for execution of the detection operation for detecting the watermark.

Rejection Group C -- Section 112, second paragraph:

Applicant respectfully traverses the rejection of claims 1, 6, 10, 13, 17, 20, and 24 under 35 U.S.C. § 112, second paragraph, as being indefinite, with regard to the claim language "more sensitive." This rejection seems to be based on the mistaken assumption that levels must be defined in absolute terms, and that the use

of relative terms is inherently indefinite. However, there is nothing improper about using relative terms in appropriate circumstances. Such circumstances pertain here.

In particular, although claims 1, 6, 10, 13, 17, 20, and 24 do not recite an absolute sensitivity level, they do clearly and definitely set forth a precise, relative sensitivity level. Specifically, the claims recite that the sensitivity level for the recording device is more sensitive than the sensitivity level for the playback device.

As explained in Section 2171 of the MPEP, the question for definiteness is "whether the scope of the claim is clear to a hypothetical person possessing the ordinary level of skill in the pertinent art." Here, the claims clearly and precisely recite that the sensitivity level for the recording device is more sensitive than the sensitivity level for the playback device. Accordingly, a person of ordinary skill in the art would have no trouble understanding precisely what is claimed with regard to the sensitivity level of the recording device, relative to the playback device.

For at least the foregoing reasons, these rejections are not well founded and should be withdrawn.

Rejection Groups D, E, and F:

Applicant respectfully traverses all of the rejections in Rejection Groups D, E, and F. All of these rejections seem to be based on a misunderstanding of the basic nature of the problem addressed by the invention, and on the mistaken assumption that watermark detection techniques must always be 100% accurate.

However, as indicated in the Detailed Description of the present application, some watermark detection techniques are "non-deterministic." As the Detailed Description also explains, when non-deterministic techniques are used,

> the content processed by one device might produce different results each time the content is processed, or ... the content processed by one device produces different results than the same content processed by another device. For example, some schemes may call for watermark screening to occur at random intervals. In such cases, a given piece of content may be found by one content protection implementation to contain a watermark, and by another implementation (or that same implementation at a later time) to not contain the watermark.

Furthermore, the problem addressed by the present invention is the situation in which "a recording device fails to detect a watermark and therefore records content in the clear, whereas a playback device detects the watermark in that same content and refuses to play the recording." The present invention addresses that problem by providing for the sensitivity level for the recording device to be more sensitive than the sensitivity level for the playback device. For example, as explained in the Detailed Description,

> when the watermark detector in the recording device is more sensitive, it is more likely that the recording device will detect the watermark. For example, a recording device's watermark detection component may check for the watermark frequently when processing the unencrypted content, and a playback device's watermark detection component may check for the watermark less frequently. As a result, the likelihood of the problem described above occurring may be reduced, since it will occur only if the more sensitive watermark detector in the recording device misses a watermark and the less sensitive watermark detector in the playback device detects the watermark (emphasis added).

For Rejection Group D, the Office Action rejects claims 5, 9, 12, 16, 19, 23, and 26 under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential elements. These rejections are based on the assertion that the claims call for a "less precision detection technique on recording device." However, that assertion has it backwards. The claims do not call for less precision in the recording device. To the contrary, the claims call for the recording device to be more sensitive or more precise for detecting watermarks. For at least the foregoing reasons, the rejections in Rejection Group D are not well founded and should be withdrawn.

For Rejection Group E, the Office Action rejects 1-12 under 35 U.S.C. § 103(a) as being unpatentable over Levy. These rejections seem to disregard the fact that watermark detection techniques may be non-deterministic. For instance, these rejections include a "note" which asserts, for example, that frames must be "completely checked .. to assure the complete coverage of watermark detections." Furthermore, these rejections seem to give no weight to the explicit claim language calling for the sensitivity of the recording device to be "more sensitive" than the sensitivity of the playback device. The Office Action cites to five different parts of Levy in an attempt to support the assertion that Levy teaches a system in which the

recording device is "more sensitive" than the playback device. However, none of those parts say anything about making the recording device more sensitive than the playback device. In fact, the Office Action seems to be trying to take "official notice" that it would be obvious to make the recording device more sensitive than the playback device. However, the suggestion to make the recording device more sensitive than the playback device is only found in the present application, not in Levy. The rejection therefore seems to be improperly based on hindsight reasoning, rather than on the prior art. Applicant respectfully traverses any assertion that official notice is a proper basis for the contention that it is prior art to make the recording device more sensitive than the playback device. For at least the foregoing reasons, the rejections in Rejection Group E are not well founded and should be withdrawn.

For Rejection Group F, the Office Action rejects 13-26 under 35 U.S.C. § 103(a) as being unpatentable over APA in view of Levy. However, the Office Action recognizes that APA does not teach making the recording device more sensitive than the playback device. The Office Action relies on Levy as allegedly teaching that feature. In fact, the Office Action relies on the same sections of Levy for these rejection as it does for the rejections in Rejection Group E. However, as discussed above, none of those section of Levy say anything about making the recording device more sensitive that the playback device. Again, Applicant respectfully traverses any assertion that official notice is a proper basis for the contention that it is prior art to make the recording device more sensitive than the playback device. For at least the foregoing reasons, the rejections in Rejection Group F are not well founded and should be withdrawn.